IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-20-12-2005

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mrs. Justice CHITRA VENKATARAMAN

Writ Petition No. 41521 of 2002

Union of India,
Represented by Government of Pondicherry
Through the Inspector General of Police,
Police Department, Pondicherry. .. Petitioner.

Vs.

1. Central Administrative Tribunal,
   Madras Bench, represented by its Registrar.

2. D. Sathiyanarayana,
   Inspector of Police, Police Department,
   Pondicherry.

3. L. Ganesan,
   Inspector of Police, Police Department,
   Pondicherry.

4. I.R.C. Mohan, Inspector of Police,
   Police Department, Pondicherry.

5. N. Ramachandran,
   Inspector of Police, Police Department,
   Pondicherry.

6. R. Swaminathan,
   Inspector of Police, Police Department,
   Pondicherry.

7. V. Deivasigamani,
   Inspector of Police, Police Department,
   Pondicherry.

8. D. Ravindran,
   Inspector of Police, Police Department,
   Pondicherry. .. Respondents.

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Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records relating to order dated 30-8-2002 in O.A.No. 1167/2001 on the file of Central Administrative Tribunal, Madras and to quash the same.

Mr. Syed Mustafa for Government Pleader, Pondicherry:- For petitioner.

Mr. M. Gnanasekar:- For 2nd Respondent.

No appearance for Respondents 3,4,6,7,8.

ORDER

(Order of Court was made by P. Sathasivam, J.,)

Aggrieved by the order of the Central Administrative Tribunal, Madras Bench dated 30-8-2002 in Original Application No. 1167 of 2001, Pondicherry Administration has filed the above Writ Petition.

2. One D. Sathiyanarayana, second respondent herein, joined in the Home Department of the Government of Pondicherry on 28-7-82 as Sub Inspector of Police. He was promoted to the post of Inspector of Police on 14-8-99. While so, according to him, suddenly he was reverted by order dated 7-7-2000 to the post of Sub Inspector of Police on the findings of a Review Departmental Promotion Committee (DPC). Therefore, he approached the Tribunal for quashing of the order dated 7-7-2000 and for direction to the official respondent to promote him to the post of Inspector of Police with effect from 7-7-2000, the date on which his immediate juniors were promoted, with all other consequential benefits. Before the Tribunal, the department has filed a reply stating that the applicant, while working as Sub Inspector of Police, was awarded a minor penalty of withholding of one increment without cumulative effect, on 20-2-1998. Thereafter, DPC held on 9-8-99 and the applicant's case was considered for promotion and he was promoted on 14-8-99.

3. The Tribunal after finding that in view of punishment of withholding of one increment without cumulative effect on 20-2-98, the punishment period should have been reckoned from the date of issue of the order namely, 20-2-98 to 20-2-99 and the department shifted this period as well by one year, set aside the

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order dated 7-7-2000 and allowed his application. Questioning the same, the present writ petition has been filed by the Home Department of the Pondicherry Government.

4. Heard Mr. Syed Mustafa, learned Government Advocate for petitioner-Pondicherry Government and Mr. M. Gnanasekar, learned counsel for contesting 2nd respondent.

5. It is not in dispute that the second respondent herein suffered punishment of withholding of one increment without cumulative effect on 20-2-98. It is also not in dispute that it is a minor penalty. The date of increment of the second respondent herein was from 1-2-98. We have already mentioned that the punishment was imposed only on 20-2-98. The DPC convened a meeting on 9-8-99. Since on the date when increment of the applicant was due i.e., on 1-2-99, the DPC considered the applicant's case and promoted him on 14-8-99 without giving any posting order at that time. In the meanwhile, the third respondent by name L. Ganesan filed O.A.No. 777/99 challenging the said order of promotion by DPC and ultimately the said application was allowed. Consequent thereto, the applicant-D. Sathiyanarayana was reverted and posted as Sub Inspector of Police. Pursuant to the direction of the Tribunal in O.A.No. 777/99 dated 5-4-2000 and the common order in O.A.Nos. 1030, 1031 and 1091/99, the DPC, after finding that the second respondent herein was undergoing an operative punishment at that time he was given promotion and, therefore, justified his reversion. It was explained that the penalty of withholding one increment for one year would arise subsequent to the date only and therefore the act of withholding of the next increment started from 01-02-99, accordingly the Review Departmental Promotion Committee which met on 30-6-2000 found that he was not eligible to be considered for promotion on 9-8-99. However, another DPC held on 11-9-2000 for subsequent vacancies, considered his case and promoted him on 11-9-2000 on regular basis.

6. As rightly pointed out by the learned Government Pleader for Pondicherry, the Tribunal failed to consider the fact that by the time the punishment of withholding of increment was imposed, the proposed increment was sanctioned on 1-2-98 and therefore, the possibility to make the punishment operative is only with effect from the time he becomes entitled to draw the next increment. Accordingly, the next round of entitlement accrued i.e., as on 1-2-99 this punishment was imposed which resulted in suffering the punishment with effect from 20-2-99 for a period of one year thereon. Therefore, the finding of the Tribunal that the punishment should have ended on 31-1-99 instead the increment due on 1-2-99 was withheld resulting in ending the punishment on 31-1-2000 is not at all correct. The Tribunal itself finds that earlier date of earning the increment was 1-2-98 and the punishment was subsequently imposed i.e., 20-2-98, therefore by no means the question of suffering punishment of withholding increments can come up unless the accrual of increment is withheld. As rightly pointed out, the increment that

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accrued earlier on 1-2-98 cannot be in any way affected by the subsequently imposed punishment. In such circumstances, we are of the view that the order and the consequential direction of the Tribunal cannot be sustained.

7. The Tribunal has also committed an error in ignoring its own finding rendered in O.A.No. 777/99 on 4-5-2000 wherein relying upon the decision of the supreme Court in THE COLLECTOR OF THANJAVUR DISTRICT Vs. RAJAGOPALAN & Ors.,-JT 2000 (3) SC 376-the suffering of punishment by the applicant for the said period was confirmed and the act of promoting him during that period namely during the period in which he was suffering the punishment by the department was set aside and therefore the Tribunal in this impugned order cannot say the question of operative period of punishment in the judgment was nowhere discussed, hence the approach of the Department in the Review Departmental Promotion Committee cannot be faulted with. On the other hand, the method adopted and procedure followed by DPC is correct.

8. We are also of the view that the Tribunal has committed an error in stating that the punishment period was inadvertently extended to 2 years which is incorrect and the department rightly fixed the period of punishment only one year it becoming operative as on 1-2-99, and the contrary finding of the Tribunal is without any merit or basis.

9. Under these circumstances, the order of the Central Administrative Tribunal dated 30-8-2002 made in O.A.No. 1167 of 2001 is quashed and the Writ Petition is allowed. No costs.

R.B.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar, Central Administrative Tribunal,
Madras Bench, Madras.

2. The Inspector General Of Police,
Pondicherry.

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